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STATUTORY INSTRUMENTS

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**1997 No. 1837 (L. 27)**

**COUNTY COURTS**

**PROCEDURE**

**The County Court (Amendment) Rules 1997**

*Made* - - - - *28th July 1997*

*Coming into force* - - *1st September 1997*

1. These Rules may be cited as the County Court (Amendment) Rules 1997.
2. In these Rules, unless the context otherwise requires, an Order referred to by number means the Order so numbered in the County Court Rules 1981(1).
3. The definition of “proper officer” in Order 1, rule 3(2) shall be amended—
  - (a) by substituting, for the words “chief clerk”, the words “court manager”, and
  - (b) by substituting, for sub-paragraph (b)(iv), the following  
“(iv) Order 25, rules 2, 3(1), 8 and 12,”.
4. Order 22, rule 8(3)(3) and Order 39, rule 13(1)(4) shall be amended by substituting, for the words “chief clerk”, the words “court manager”.
5. Order 25, rule 3(1)(5) shall be amended—
  - (a) by substituting, for the words “the appropriate court”, the words “the proper officer of the appropriate court”, and
  - (b) by substituting, for the words “the registrar or such other officer of the court not below the rank of higher executive officer as the court may appoint”, the words “the proper officer”.

**Housing Act 1996(6)**

6. After Order 43, rule 16(7), there shall be inserted the following new rule—

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(1) S.I. 1981/1687; the relevant amending instruments are noted in footnotes to provisions in the body of the instrument.  
(2) The definition of proper officer has been amended by S.I. 1991/1126, 1328, 1993/711, 2150, 1994/2403 and 1996/2810.  
(3) Order 22, rule 8 was amended by S.I. 1984/878, 1989/2426 and 1994/2403.  
(4) Order 39, rule 13 was amended by S.I. 1984/878 and 1993/711.  
(5) Order 25, rule 3 was amended by S.I. 1984/878, 1988/278, 1989/1838, 2426, 1994/2403 and 1995/2838.  
(6) 1996 c. 52.  
(7) Order 43, rule 16 was added by S.I. 1988/278.

**“Transfer to leasehold valuation tribunal**

**16A.** Where a question arising in proceedings is ordered to be transferred to a leasehold valuation tribunal for determination under section 31C of the Landlord and Tenant Act 1985<sup>(8)</sup>, the proper officer shall—

- (a) send notice of the transfer to all parties to the proceedings, and
- (b) send to the leasehold valuation tribunal copies certified by the district judge of all entries in the records of the court relating to the question, together with the order of transfer and all documents filed in the proceedings which relate to the question.”.

**7.—**(1) Order 49, rule 6A(3)(c)(iii)<sup>(9)</sup> shall be amended by substituting, for the words “conditions mentioned in section”, the words “conditions provided by section 19A<sup>(10)</sup> or section”.

(2) Order 49, rule 6A(3)(d), (6)(d), (7)(ii), (9)(d), (10)(e) and (16)(a) shall be amended by inserting at the beginning the words “where the tenancy and any agreement for the tenancy were entered into before 28th February 1997,”.

(3) For Order 49, rule 6A(10)(b)(iii), there shall be substituted the following—

“(iii) where it is the subject of an oral agreement, that the tenancy is periodic.”.

**8.** After Order 49, rule 6A, there shall be inserted the following new rule—

**“Housing Act 1996 : injunctions and powers of arrest**

**6B.—**(1) An application for an injunction under section 152 of the Housing Act 1996 may be made by originating application in the appropriate prescribed form and shall be commenced in the court for the district in which the respondent resides or the conduct complained of occurred.

(2) Every application shall—

- (a) state the terms of the injunction applied for; and
- (b) be supported by an affidavit in which the grounds on which the application is made are set out.

(3) Every application made on notice must be served, together with a copy of the affidavit, by the applicant on the respondent personally not less than 2 days before the date on which the application will be heard.

(4) Where an application is made without giving notice, the affidavit in support shall explain why notice was not given and the application and affidavit shall be served (with a copy of any order made by the court), on the respondent personally without delay.

(5) Unless otherwise directed, every application made on notice shall be heard in open court.

(6) Where in exercise of the powers conferred by section 152(6) or 153(1) of the Housing Act 1996, a power of arrest is attached to any provision of an injunction (“a relevant provision”)—

- (a) each relevant provision shall be set out in a separate clause of the injunction and no such clause shall refer to any form of conduct which would not entitle a constable to arrest the respondent under paragraph (a), (b) or (c) of section 152(1) or under paragraph (a), (b) or (c) of section 153(5) of the Housing Act 1996; and

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<sup>(8)</sup> 1985 c. 70; section 31C was inserted by the Housing Act 1996 (c. 52), section 83(3).

<sup>(9)</sup> Order 49, rule 6A was added by S.I. 1993/2175.

<sup>(10)</sup> Section 19A is inserted into the Housing Act 1988 (c. 50) by the Housing Act 1996 (c. 52), section 96.

- (b) the applicant shall deliver a copy of the relevant provisions to the police officer for the time being in charge of any police station for the area where the conduct occurred.
  - (7) Where an order is made varying or discharging any relevant provision of an injunction to which a power of arrest has been attached, the proper officer shall—
    - (a) immediately inform the police officer for the time being in charge of the police station to which a copy of the relevant provisions was delivered under paragraph (6); and
    - (b) deliver a copy of the order to any police officer so informed.
  - (8) The judge before whom a person is brought following his arrest may adjourn the proceedings and, where such an order is made, the arrested person shall be released and—
    - (a) be dealt with (whether by the same or another judge) within 14 days of the day on which he was arrested; and
    - (b) be given not less than 2 days' notice of the adjourned hearing.
- Nothing in this paragraph shall prevent the issue of a notice under Order 29, rule 1(4) if the arrested person is not dealt with within the period mentioned in sub-paragraph (a).
- (9) In relation to a person who is in custody under such an order and warrant of a county court, Order 29, rule 3, shall have effect as if the order and warrant were issued at the instance of the person who made the application.
  - (10) Order 29, rule 1 shall apply where an application is made to commit a person—
    - (a) for breach of an injunction granted, or
    - (b) arrested under a power of arrest attached to an injunction,
- under Chapter III of part V of the Housing Act 1996 as if references in that rule to the judge included references to a district judge.
- (11) In paragraph (8) “arrest” means the arrest of a person pursuant to a power of arrest which, in exercise of the powers conferred by section 152(6) or 153(1) of the Housing Act 1996, has been attached to an injunction.
  - (12) The jurisdiction of the court under sections 152 to 157 of the Housing Act 1996 may be exercised by a district judge.”.

**Business List: service out of England and Wales**

9. After Order 48C(11), rule 7, there shall be inserted the following new rule—

**“Service out of England and Wales**

7A. Order 8 shall apply where, in proceedings which are included or are to be included in the business list, service is to be effected out of England and Wales as if, for rule 2(1) (d), there were substituted the following—

- “(d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—
  - (i) was made within England and Wales, or
  - (ii) was made by or through an agent trading or residing within England and Wales on behalf of a principal trading or residing out of England and Wales, or

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(11) Order 48C was inserted by S.I. [1994/1288](#).

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- (iii) is by its terms, or by implication, governed by English law, or
- (iv) contains a term to the effect that a court in England and Wales shall have jurisdiction to hear and determine any action in respect of the contract;
- (dd) the claim is brought in respect of a breach committed within England and Wales of a contract made within or out of England and Wales, and, irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of England and Wales that rendered impossible the performance of so much of the contract as ought to have been performed within England and Wales;”.”.

**10.** Order 42, rule 5(3) shall be amended by substituting, for the words “Order 9, rule 6(1)(a)”, the words “Order 9, rule 6(1)”.

The undersigned members of the Rule Committee, appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(12), having made these Rules, certify them and submit them to the Lord Chancellor.

*Frank J. White  
Neil Butter  
Helen Paling  
Hugh Jones  
R. Winstanley  
Margaret Wilby  
W. A. Vincent  
Henrietta Manners  
E. C. Gee*

I allow these Rules, which shall come into force on 1st September 1997.

28th July 1997

*Irvine of Lairg , C.*

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(12) 1984 c. 28; section 75 was amended by the Courts and Legal Services Act 1990 (c. 41), sections 2(4) and 16 and Schedule 18, paragraph 47.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the County Court Rules 1981 so as—

- (a) to reflect the change in name of chief clerk(*rules 3(a) and 4*);
- (b) to enable the proper officer to take oral examinations (or to nominate an officer of the court to do so) and to remove the requirement for that officer to be of a certain grade in the Court Service(*rules 3(b) and 5*);
- (c) to provide a procedure where a question arising in proceedings is transferred to a leasehold valuation tribunal for determination(*rule 6*);
- (d) to amend the accelerated possession procedure following the enactment (by the Housing Act 1996, section 96) of section 19A of the Housing Act 1988 (c. 50)(*rule 7*);
- (e) to provide the procedure for making an application for an injunction against anti-social behaviour (*rule 8*);
- (f) to enlarge the circumstances in which a summons in a business list action may be served out of England and Wales (*rule 9*), and
- (g) to correct a cross reference in Order 42, rule 5 (subsequent procedure in default action against the Crown) (*rule 10*).